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Paul F. Berlin

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EXAMINER

PAULS, JOHN A

ART UNIT

PAPER NUMBER

3686

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/677,839	Applicant(s) BERLIN ET AL.	
	Examiner JOHN A. PAULS	Art Unit 3686	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) ☒ Notice of References Cited (PTO-892) | 4) ☐ Interview Summary (PTO-413) |
| 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) ☒ Information Disclosure Statement(s) (PTO/SB/08) | 5) ☐ Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>14 September, 2004 and 12 October, 2004</u> . | 6) ☐ Other: _____ |

DETAILED ACTION

Status of Claims

1. This action is in reply to the application filed on 2 October, 2003.
2. Claims 1 - 50 are currently pending and have been examined.

Information Disclosure Statement

3. The Information Disclosure Statements filed on 14 September, 2004 and 12 October, 2004 have been considered. Initialed copies of the Form 1449 are enclosed herewith.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1 – 10 and 28 - 49 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The steps recited do not qualify as a statutory process. In order for a method to be considered a "process" under §101, a claimed process must either: (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials). Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972). If neither of these requirements is met by the claim, the method is not a patent eligible process under §101 and is non-

statutory subject matter. Although the steps are performed using a computer, the computer is a field of use limitation because the steps are human actions that do not require (i.e. are not tied to) the computer.

6. Claims 11 – 27 and 50 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 11—27 and 50 are directed to a system. However, the recited components of the system appear to lack the necessary physical components (hardware) to constitute a machine or manufacture under § 101. Therefore, these claim limitations can be reasonably interpreted as computer program modules or software per se. The claims are directed to functional descriptive material per se and hence non-statutory. The claims constitute computer programs representing computer listings per se. Such descriptions or expressions of the programs are not physical “things”. They are neither computer components nor statutory processes, as they are not “acts” being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer, which permit the computer program’s functionality to be realized. See Lowry, 32 F.3d at 1583-84, 32 USPQ2d at 1035

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1 – 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites “*being prepared to provide service*” which renders the claim vague and indefinite. The term “*being prepared to provide service*” in claim 1 is a relative term which renders the claim indefinite. The term “*being prepared to provide service*” is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree of preparedness or of the level of service to be provided, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.
9. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 3 recites “*selectively making the insurance product to a restricted group of clients*” which renders the claim vague and indefinite. The term “*selectively making the insurance product to a restricted group of clients*” is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree of selection and restriction, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.
10. Claims 10 and 49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 10 recites “*based on factors*” which renders the claim vague and indefinite. The term “*based on factors*” is not defined by the claim, the

specification does not provide a standard for ascertaining whether the *factors* are related to the account value or some other condition, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

11. Claims 21 – 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 21 recites “*a computer system adapted to administer client accounts*” which renders the claim vague and indefinite. The term “*a computer system adapted to administer client accounts*” is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree of adaptation of what specific structure is used to adapt the computer, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is also unclear if the computer is being claimed, or software to make the computer function in accordance with the invention.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 1, 2, 4 – 8, 11, 21 – 27 and 50 are rejected under 35 U.S.C. 102(b) as being anticipated by Kavanaugh (US PG PUB 2002/0087365 A1).

CLAIM 1

Kavanaugh as shown discloses a system for funding life insurance policies with annuities with the following limitations:

- *combining a life insurance policy chassis from an insurance company with one or more associated investment vehicles to be managed by an asset manager to form a variable universal life insurance product; (see at least Kavanaugh paragraph 0015, 0041 and 0042);*
- *making the insurance product available to clients of the asset manager; the insurance company being prepared to provide service for the death benefit and associated investment vehicles in the variable universal life insurance product; (see at least Kavanaugh paragraph 0045).*

CLAIMS 2 and 4 - 8

Kavanaugh as shown discloses the limitations shown above with respect to Claim 1. Kavanaugh also discloses the following limitations:

- *the death benefit is funded by the associated investment vehicles; (see at least Kavanaugh paragraph 0015);*
- *making the insurance product available to respective clients selected in accordance with at least one criterion based on the client's assets; (see at least Kavanaugh paragraph 0032);*

- *the asset manager establishing a plurality of sub-accounts for the associated investment vehicles; (see at least Kavanaugh paragraph 0046);*
- *the asset manager selecting the associated investment vehicles available in the insurance product and the asset manager allocating a client premium for the insurance product amongst the associated investment vehicles; (see at least Kavanaugh paragraph 0015);*
- *the client allocating a premium for the insurance product amongst the associated investment vehicles; (see at least Kavanaugh paragraph 0015);*
- *compensating the insurance company with a fee (i.e. premium) funded solely from the associated investment assets; (see at least Kavanaugh paragraph 0015);*

CLAIM 11

Kavanaugh as shown discloses a system for funding life insurance policies with annuities with the following limitations:

- *a life insurance product offered by the method recited in claim 1; (see at least Kavanaugh paragraph 0015).*

CLAIM 21

Kavanaugh as shown discloses a system for funding life insurance policies with annuities with the following limitations:

- *a computer system adapted to administer client accounts managed by the asset manager, said client accounts including accounts in said insurance products managed by said asset manager; (see at least Kavanaugh paragraph 0063);*

- *a client interface configured to make available to said clients of the asset manager purchasing the insurance products, information relating to the client accounts administered by the computer system, including the accounts of the insurance product managed by the asset manager; (see at least Kavanaugh paragraph 0073).*

CLAIMS 22 - 27

Kavanaugh as shown discloses the limitations shown above with respect to Claim 1. Kavanaugh also discloses the following limitations:

- *the client interface is accessible via a communications network; (see at least Kavanaugh paragraph 0073);*
- *the computer system is further configured to exchange information with the insurance company related to said death benefit; (see at least Kavanaugh paragraph 0065 - 0073);*
- *the computer system forwards a fee to the insurance company related to said death benefit; (see at least Kavanaugh paragraph 0065 - 0073);*
- *the accounts of the insurance product managed by the asset manager comprise sub-accounts and the fee is determined in accordance with the value of the sub-accounts; (see at least Kavanaugh paragraph 0046);*
- *the client interface makes available the information relating to the accounts of the insurance product managed by the asset manager and information relating to the death benefit of the insurance product; (see at least Kavanaugh paragraph 0073);*
- *the computer system administers the accounts of the insurance product of a client managed by the asset manager; (see at least Kavanaugh paragraph 0065 - 0073).*

CLAIM 40

Kavanaugh as shown discloses a system for funding life insurance policies with annuities with the following limitations:

- *making available to respective clients of a plurality of investment fund managers a variable life insurance contract which provides that the client's investment fund manager manages the associated investment assets which fund the death benefit of the respective contract; (see at least Kavanaugh paragraph 0015, 0041, 0042 and 0045 - 0073);*
- *for each contract entered into by a client of an investment fund manager, a death benefit insurer providing the death benefit and the respective investment fund manager managing the associated investment assets and compensating the death benefit insurer from at least one of: return on the associated investment assets or the associated investment assets; (see at least Kavanaugh paragraph 0015 and 0045).*

CLAIMS 41 – 44 and 47

Kavanaugh as shown discloses the limitations shown above with respect to Claim 1. Kavanaugh also discloses the following limitations:

- *a death benefit insurer making available the variable life insurance contract; (see at least Kavanaugh paragraph 0046);*
- *the respective investment fund managers making available the variable life insurance contract; (see at least Kavanaugh paragraph 0054);*

- *making the variable life insurance contract available to respective clients selected in accordance with at least one criterion based on the client's assets; (see at least Kavanaugh paragraph 0032 and 0035);*
- *investing the associated investment assets in at least one investment fund or at least one investment sub account; (see at least Kavanaugh paragraph 0046);*
- *compensating the death benefit insurer a guaranteed fee from return on the associated investment assets and/or from the associated investment assets; (see at least Kavanaugh paragraph 0015 and 0045).*

CLAIM 50

Kavanaugh as shown discloses a system for funding life insurance policies with annuities with the following limitations:

- *an investment fund manager interface configured for use by an investment fund manager to make available to respective clients of the investment fund manager a variable life insurance contract, and manage the associated investment assets which fund the death benefit of the respective contract; (see at least Kavanaugh paragraph 0063 - 0073);*
- *a death benefit insurer interface configured for use by a death benefit insurer to provide the death benefit for each respective contract, determine a fixed compensation fee to provide the death benefit, and obtain the fixed compensation fee from the investment fund manager; wherein the investment fund manager interface and the death benefit insurer interface are connected over a communication network; (see at least Kavanaugh paragraph 0063 - 0073).*

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

16. Claims 3, 12, 28 – 30 and 45 - 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kavanaugh (US PG PUB 2002/0087365 A1) and in further view of George (US 5,775,734 A).

CLAIM 3

Kavanaugh as shown discloses the limitations shown above with respect to Claim 1. Kavanaugh does not specifically disclose the following limitations:

- *the asset manager selectively making the insurance product to a restricted group of the clients of the asset manager; (see at least George column 5 line 21 – 29 and line 34 – 39);*

CLAIM 12

Kavanaugh as shown discloses the limitations shown above with respect to Claim 11. Kavanaugh does not specifically disclose the following limitations, however, George does:

- *the investment vehicles are proprietary to the asset manager; (see at least George column 5 line 21 – 29 and line 34 – 39).*

CLAIM 28

Kavanaugh as shown discloses a system for funding life insurance policies with annuities with the following limitations:

- *executing a participation agreement that appoints the asset manager's fund management as managers of the investment vehicles; (see at least Kavanaugh paragraph 0042);*
- *establishing mechanisms for the reporting of assets under management by the asset manager, the assessment of fees, and transfer of funds from the asset manager to the insurance company; (see at least Kavanaugh paragraph 0065 - 0072).*

Kavanaugh as shown discloses the limitations shown above. Kavanaugh does not specifically disclose the following limitations, however, George does:

- *registering the asset manager as a representative of the insurance company; (see at least George column 2 line 16 – 21)*
- *providing a life insurance policy chassis, and accompanying licenses and permissions to the asset manager; (see at least George column 2 line 16 – 21 and Claim 12).*

CLAIM 29 and 30

Kavanaugh as shown discloses the limitations shown above with respect to Claim 28. Kavanaugh also discloses the following limitations:

- *the insurance company administers and services the death benefit in the insurance product and the asset manager separately manages, administers and services the investment vehicles in the insurance product; (see at least Kavanaugh paragraph 0046 and 0054);*
- *the insurance company and the asset manager provide separate client access; (see at least Kavanaugh paragraph 0073).*

CLAIM 45 and 46

Kavanaugh as shown discloses the limitations shown above with respect to Claim 40. Kavanaugh does not specifically disclose the following limitations, however, George does:

- *the respective investment fund manager selecting the at least one investment fund or at least one investment sub account in which to invest the associated investment assets; (see at least George column 2 line 16 – 21);*
- *the respective client selecting the at least one investment fund or at least one investment sub account in which to invest the associated investment assets; (see at least George column 1 line 36 – 38 and column 2 line 25 - 31).*

George discloses an investment administration system which includes proprietary investment vehicles. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the funding system of Kavanaugh so as to have included

proprietary investment vehicles, in accordance with the teaching of George, in order to allow for effective marketing of the investment administration system, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

17. Claims 9, 10, 13 – 20 and 31 - 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kavanaugh (US PG PUB 2002/0087365 A1) and in further view of Arena et al. (US PG PUB 2003/0105652 A1).

CLAIMS 9 and 10

Kavanaugh as shown discloses the limitations shown above with respect to Claim 1. Kavanaugh does not specifically disclose the following limitations, however, Arena does:

- *the fee (i.e. premium) is a percentage of the account value;* (see at least Arena paragraph 0042);
- *the fee (i.e. premium) is a guaranteed percentage based on factors;* (see at least Arena paragraph 0006 and 0042).

CLAIM 16

Kavanaugh as shown discloses the limitations shown above with respect to Claim 11. Kavanaugh also discloses the following limitations:

- *the fixed percentage is paid to the insurance company out of the investment assets managed by the asset manager;* (see at least Kavanaugh paragraph 0015).

CLAIMS 13 – 15 and 17 - 20

Kavanaugh as shown discloses the limitations shown above with respect to Claim 11. Kavanaugh does not specifically disclose the following limitations, however, Arena does:

- *the insurance charges for the death benefit are based on the value of the investment assets; (see at least Arena paragraph 0019 and 0042);*
- *the insurance charges for the death benefit are a fixed percentage of the value of the investment assets; (see at least Arena paragraph 0019 and 0042);*
- *the fixed percentage is guaranteed not to change; (see at least Arena paragraph 0019);*
- *the fixed percentage is the only recurring charge paid to the insurance company; (see at least Arena paragraph 0043);*
- *the death benefit is a variable death benefit; (see at least Arena paragraph 0036);*
- *the death benefit varies in accordance with the value of the investment assets; (see at least Arena paragraph 0036);*
- *the death benefit is the minimum necessary to maintain the insurance product as tax advantaged insurance; (see at least Arena paragraph 0035).*

CLAIM 31

Kavanaugh as shown discloses a system for funding life insurance policies with annuities with the following limitations:

- *allocating the investment assets of the variable life insurance policy to at least one investment fund or at least one investment sub account; (see at least Kavanaugh paragraph 0015 and 0043);*

- *charging the customer cost of insurance fees, the cost of insurance fees being guaranteed for the life of the insurance policy; (see at least Kavanaugh paragraph 0054).*

Kavanaugh as shown discloses the limitations shown above. Kavanaugh does not specifically disclose the following limitations, however, Arena does:

- *providing a variable death benefit associated with the policy value upon the death of the customer, the variable death benefit varying in accordance with the value of the investment assets; (see at least Arena paragraph 0036).*

CLAIMS 32 – 39

Kavanaugh as shown discloses the limitations shown above with respect to Claim 31. Kavanaugh also discloses the following limitations:

- *the suitable customers are identified by an asset manager currently managing the customer's assets according to criteria; (see at least Kavanaugh paragraph 0032 and 0035);*
- *the criteria comprises the age of the customers; (see at least Kavanaugh paragraph 0009);*
- *the criteria comprises the amount of assets of the customers; (see at least Kavanaugh paragraph 0032 and 0035);*
- *the criteria comprises financial indicators of the customers; (see at least Kavanaugh paragraph 0032 and 0035);*
- *the asset manager allocates the life insurance policy assets to the at least one investment fund or at least one investment sub account managed by the asset manager; and the asset*

manager controls the life insurance policy assets; (see at least Kavanaugh paragraph 0015);

- *the guaranteed cost of insurance fees charged to the customer is a fixed percentage of the value of the life insurance policy; (see at least Kavanaugh paragraph 0015);*
- *the guaranteed cost of insurance fees charged to the customer is pre-determined by an algorithm; (see at least Kavanaugh paragraph 0015).*

Kavanaugh as shown discloses the limitations shown above with respect to Claim 31. Kavanaugh does not specifically disclose the following limitations, however, Arena does:

- *the variable death benefit is the minimum necessary to maintain the insurance policy as a tax advantaged insurance policy; (see at least Arena paragraph 0035).*

CLAIMS 48 – 49

Kavanaugh as shown discloses the limitations shown above with respect to Claim 40. Kavanaugh does not specifically disclose the following limitations, however, Arena does:

- *fixing the guaranteed fee to a percentage of the account value; ; (see at least Arena paragraph 0042);*
- *obtaining guaranteed percentage based on factors; (see at least Arena paragraph 0006 and 0042).*

Arena discloses an investment management system which includes a death benefit based on the value of the investment. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the funding system of Kavanaugh so as to have included a death benefit based on the value of the investment, in accordance with the teaching of

Arena, in order to maximize the after tax benefits to a beneficiary, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

CONCLUSION

Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **John A. Pauls** whose telephone number is **(571) 270-5557**. The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **JERRY O'CONNOR** can be reached at **571.272.6787**. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair> . Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to (571) 273-8300.

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/J. A. P./

Examiner, Art Unit 3686

Date: 14 April 2009

/Gerald J. O'Connor/
Supervisory Patent Examiner
Group Art Unit 3686